

DWIGHT F. RITTER, ESQ. (STATE BAR #127030)
RITTER & ASSOCIATES
2869 INDIA STREET
SAN DIEGO, CA 92103
(619) 296-0123

Attorney for Plaintiffs
ROBERT MATOS and SLOBODAN PRANJIC

FILED
DISTRICT COURT OF GUAM

MAY -3 2007 *mb*

MARY L.M. MORAN
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

TCW SPECIAL CREDITS, et al.)	Case No. 96-00055
)	
Plaintiffs,)	REQUEST FOR LEAVE TO FILE
)	SUPPLEMENTAL BRIEF REGARDING
v.)	MATOS AND PRANJIC PREJUDGMENT
)	AND POST-JUDGMENT INTEREST;
FISHING VESSEL CHLOE Z,)	SUPPLEMENTAL BRIEF REGARDING
Et al.,)	MATOS AND PRANJIC PREJUDMGENT
)	AND POST-JUDGMENT INTEREST
Defendants.)	

Plaintiffs, ROBERT MATOS and SLOBODAN PRANJIC, by their counsel, Dwight Ritter, request leave of court to file this supplemental brief that will attempt to clarify the entitlement of MATOS and PRANJIC to pre and post-judgment interest, under 9th Circuit law, U.S. Supreme Court law, the applicable federal statutes, and Federal Rules of Civil Procedure. MATOS and PRANJIC have included with their request for leave, the supplemental brief that is a part of their request for leave to file a supplemental brief. MATOS and PRANJIC suggest the following principles of law will assist the Guam District Court

ORIGINAL

1
2 in reaching the required judgments under applicable legal
3 principles:

4 **ROBERT MATOS STATES THE FOLLOWING IN SUPPORT:**

5 **I. MATOS is entitled to prejudgment interest from his**
6 **date of injury August 8, 1992.**

7 City of Milwaukee v. National Gypsum Company (1995) 515
8 U.S. 189, 115 U.S. Supreme Court 2091; (pre-judgment interest
9 from the date of injury)

10 Vance v. American Hawaii Cruises, Inc. (9th Circuit, 1986)
11 789 Fed. 2nd 790; (pre-judgment interest from the date of
12 injury)

13 Alkmeon Naviera v. M/V Marina L (9th Circuit, 1980) 633 Fed
14 2nd 789; (pre-judgment interest from the date of injury)

15 Western Pacific Fisheries, Inc. v. SS President Grant (9th
16 Circuit 1984) 730 Fed. 2nd 1280; (pre-judgment interest from the
17 date of injury)

18 Barnett v. Sealand Services, Inc. (9th Circuit, 1989) 875
19 Fed. 2nd 741; (pre-judgment interest from the date of injury)

20 Saavedra v. Korean Airlines Ltd. (9th Circuit, 1996) 93 Fed
21 3rd 547, 1196 A.M.C. 2113. (pre-judgment interest from the date
22 of injury)

23 **II. MATOS is entitled to prejudgment interest from the**
24 **date of injury to the date of the initial, pre-appeal judgment,**
25 **which is February 22, 1999.**

26 City of Milwaukee v. National Gypsum Company (1995) 515
27 U.S. 189, 115 U.S. Supreme Court 2091;
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2 Turner v. Japan Lines, Inc. (9th Circuit, 1983) 702 Fed. 2nd
3 752; (interest to be awarded from initial pre-appeal judgment)
4 Air Separation, Inc. v. Underwriters at Lords of London
5 (9th Circuit, 1995) 45 Fed 3rd 288.

6 **III. MATOS is entitled to prejudgment interest at an**
7 **"average" of the statutory post-judgment interest rates,**
8 **pursuant to 28 U.S.C. Section 1961, which is 5.03%.**

9 28 U.S.C. Section 1961;
10 City of Milwaukee v. National Gypsum Company (1995) 515
11 U.S. 189, 115 U.S. Supreme Court 2091; (U.S. Supreme Court
12 approved the method of averaging statutory post-judgment
13 interest rates in determining prejudgment interest rates)
14 Air Separation, Inc. v. Underwriters at Lords of London
15 (9th Circuit, 1995) 45 Fed 3rd 288; (post-judgment interest must
16 be calculated on the entire judgment, including prejudgment
17 interest)

18 Nelson v. Energy Measurements Group, Inc. (9th Circuit,
19 1994) 37 Fed.3rd 1384;

20 Western Pacific Fisheries, Inc. v. SS President Grant (9th
21 Circuit 1984) 730 Fed. 2nd 1280. (post-judgment interest rates
22 appropriate for prejudgment interest rates)

23 **IV. MATOS is entitled to post-judgment interest assessed**
24 **on the entire judgment including the prejudgment interest.**

25 Turner v. Japan Lines, Inc. (9th Circuit, 1983) 702 Fed. 2nd
26 752; (post-judgment interest calculated on entire judgment
27 including prejudgment interest)
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Air Separation, Inc. v. Underwriters at Lords of London
(9th Circuit, 1995) 45 Fed 3rd 288. (post-judgment interest is
required on prejudgment interest component)

V. MATOS is entitled to prejudgment interest on "present
day value" damages determined in the Unpingco order (February
19, 1999) before the initial pre-appeal entry of judgment. Judge
Unpingco determined in that order that all damages were reduced
to "present day value" except the \$ 50,000 award for future pain
and suffering. (After contributory negligence =\$ 33,333.33)
Thus, all remaining MATOS damages are reduced to "present day
value" and are entitled to prejudgment interest except for
\$ 33,333.33 in future pain and suffering.

Vance v. American Hawaii Cruises, Inc. (9th Circuit, 1986)
789 Fed. 2nd 790;

Barnett v. Sealand Services, Inc. (9th Circuit, 1989) 875
Fed. 2nd 741;

Evich v. Morris (9th Circuit, 1987) 819 Fed. 2nd 256;

Moragne v. State Marines Line (1970) 398 U.S. 375, 98 U.S.
Supreme Court 1772, 26 L.ed 2nd 339;

VI. MATOS is entitled to post-judgment interest from
February 22, 1999, the date of the initial pre-appeal entry of
judgment until full satisfaction of his judgment.

28 U.S.C. Section 1961

Turner v. Japan Lines, Inc. (9th Circuit, 1983) 702 Fed. 2nd
752. (interest to be awarded from initial pre-appeal judgment)

VII. MATOS is entitled to a post-judgment interest rate, as

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2 mandated by 28 U.S.C. 1961, which is 4.72%, and calculated on
3 the entire judgment, including prejudgment interest and entry of
4 a new judgment with interest accruing to June 1, 2007.
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6 **SLOBODAN PRANJIC STATES THE FOLLOWING IN SUPPORT:**
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8 I. PRANJIC is entitled to prejudgment interest from his
9 date of injury which is November 25, 1992.

10 City of Milwaukee v. National Gypsum Company (1995) 515
11 U.S. 189, 115 U.S. Supreme Court 2091; (prejudgment interest
12 from date of injury)

13 Vance v. American Hawaii Cruises, Inc. (9th Circuit, 1986)
14 789 Fed. 2nd 790; (prejudgment interest from the date of injury)

15 Alkmeon Naviera v. M/V Marina L (9th Circuit, 1980) 633 Fed
16 2nd 789; (prejudgment interest from the date of injury)

17 Western Pacific Fisheries, Inc. v. SS President Grant (9th
18 Circuit 1984) 730 Fed. 2nd 1280; (prejudgment interest from the
19 date of injury)

20 Barnett v. Sealand Services, Inc. (9th Circuit, 1989) 875
21 Fed. 2nd 741; (prejudgment interest from the date of injury)

22 Saavedra v. Korean Airlines Ltd. (9th Circuit, 1996) 93 Fed
23 3rd 547, 1196 A.M.C. 2113. (prejudgment interest from the date
24 of injury)

25 II. PRANJIC is entitled to prejudgment interest to the
26 date of the initial, pre-appeal judgment, which is January 11,
27 1999. The Guam District Court now has the responsibility to
28 consider all issues relating to prejudgment and post-judgment

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2 upon the entry of a judgment. Thus, the District Court must
3 consider prejudgment interest in establishing a new PRANJIC
4 judgment and must award prejudgment interest since no
5 "exceptional circumstances" exist. To do otherwise would result
6 in a "manifest injustice".
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8 City of Milwaukee v. National Gypsum Company (1995) 515
9 U.S. 189, 115 U.S. Supreme Court 2091; (prejudgment interest is
10 normal and proper in maritime cases unless "exceptional
11 circumstances" exist)

12 Vance v. American Hawaii Cruises, Inc. (9th Circuit, 1986)
13 789 Fed. 2nd 790; (prejudgment interest allowed unless
14 "exceptional circumstances exist")

15 Air Separation, Inc. v. Underwriters at Lords of London
16 (9th Circuit, 1995) 45 Fed 3rd 288; (District Court responsible
17 for determining both prejudgment and post-judgment interest
18 rates)

19 U.S. v. Hauser (9th Circuit, 1986) 804 Fed.2nd 567;
20 Jeffries v. Wood (9th Circuit, 1997) 114 Fed. 3rd 1984;
21 Old Person v. Brown (9th Circuit, 2002) 312 Fed. 3rd 1036;
22 Hook v. Arizona Department of Corrections (9th Circuit,
23 1997) 107 Fed.3rd 1397;

24 Litton Systems, Inc. v Honeywell, Inc. (9th Circuit) 238
25 Fed. 3rd 1376, Rehearing denied, Cert. Dismissed, 122 U.S.
26 Supreme Court 914;

27 Merritt v. Mackey (9th Circuit, 1991) 932 Fed. 2nd 1377;

28 Power Agent, Inc. v. Electronic Data Systems Corp. (9th

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2 Circuit, 2004) 358 Fed. 3rd 1187;

3 Cunningham v. Gates (9th Circuit, 2000) 229 Fed. 3rd 1271;

4 U.S. V. Cuddy (9th Circuit 1998) 147 Fed. 3rd 111.

5 **III. PRANJIC is entitled to prejudgment interest at an**
6 **"average" of the statutory post-judgment interest rates pursuant**
7 **to 29 U.S.C. Section 1961. That rate is 5.03%.**

8 28 U.S.C. Section 1961

9 City of Milwaukee v. National Gypsum Company (1995) 515
10 U.S. 189, 115 U.S. Supreme Court 2091; (Supreme Court approved
11 the method of "averaging" statutory post-judgment interest rates
12 in determining pre-judgment interest rates)

13 Nelson v. Energy Measurements Group, Inc. (9th Circuit,
14 1994) 37 Fed.3rd 1384;

15 Western Pacific Fisheries, Inc. v. SS President Grant (9th
16 Circuit 1984) 730 Fed. 2nd 1280; (post-judgment interest rates
17 appropriate for prejudgment interest rates)

18 **IV. PRANJIC is entitled to post-judgment interest assessed**
19 **on the entire judgment including the prejudgment interest.**

20 Turner v. Japan Lines, Inc. (9th Circuit, 1983) 702 Fed. 2nd
21 752; (post-judgment interest on entire judgment including
22 prejudgment interest)

23 Air Separation, Inc. v. Underwriters at Lords of London
24 (9th Circuit, 1995) 45 Fed 3rd 288. (post-judgment interest
25 required on prejudgment interest)

26 **V. PRANJIC is entitled to post-judgment interest from**
27 **January 11, 1999, the date of the initial pre-appeal entry of**
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2 judgment, until full satisfaction of the new judgment.

3 28 U.S.C. Section 1961

4 Turner v. Japan Lines, Inc. (9th Circuit, 1983) 702 Fed. 2nd
5 752. (Interest to be awarded from initial pre-appeal judgment to
6 satisfaction)

7 VI. PRANJIC is entitled to a post-judgment interest rate,
8 as mandated by 28 U.S.C. 1961, which is 4.72%.

9 28 U.S.C. Section 1961

10 VII. PRANJIC concedes that his first pretrial judgment
11 should be reduced by \$ 43,901.92.

12 VIII. PRANJIC agrees that Judge Unpingco's order of February
13 19, 1999, did not reduce the future pain and suffering of
14 \$ 50,000 to "present day value". Thus, this amount should be
15 reduced from the initial pre-appeal judgment in calculating
16 PRANJIC's prejudgment interest.

17 Barnett v. Sealand Services, Inc. (9th Circuit, 1989) 875
18 Fed. 2nd 741;

19 Evich v. Morris (9th Circuit, 1987) 819 Fed. 2nd 256;

20 Moragne v. State Marines Line (1970) 398 U.S. 375, 98 U.S.
21 Supreme Court 1772, 26 L.ed 2nd 339;


22 IX. PRANJIC is entitled to a new judgment based on these
23 principles with both prejudgment interest and post-judgment
24 interest accrued to June 1, 2007.

25 In conclusion, one case predominates in terms of addressing
26 the issues before the Guam District court. In City of Milwaukee
27 v. National Gypsum Company (1995) 515 U.S. 189, 115 U.S. Supreme
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3 Court 2091, the U.S. Supreme Court determined several issues
4 directly applicable to the case at bar. First, the Court
5 affirmed a judgment in which prejudgment interest was determined
6 from the date of injury. Second, the Court "averaged" the
7 prejudgment interest rates based on use of the post-judgment
8 rates from the same period of time, and determined that this was
9 a most fair and appropriate formula. Third, and most
10 importantly, the Supreme Court determined that in admiralty
11 cases, such as MATOS and PRANJIC's, it is customary and
12 appropriate to consider and normally award prejudgment interest
13 unless "exceptional circumstances" exist for the denial of
14 prejudgment interest. Fourth, the court held that fault of the
15 parties and delay in litigation, did not warrant "exceptional
16 circumstances" for denial of prejudgment interest to the
17 plaintiffs. The Guam District court could have no better
18 authority than the U.S. Supreme Court on which to render
19 prejudgment and post-judgment interest amounts for MATOS and
20 PRANJIC.

21 Wherefore, MATOS and PRANJIC request the Guam District
22 Court to enter a decision consistent with these principles and
23 in conformity with prejudgment interest and post-judgment
24 interest dictates in the 9th Circuit Court of Appeals and the
25 United States Supreme Court.

26 Dated: 4/30, 200⁷


DWIGHT F. RITTER, Esq.
Attorney for Plaintiffs,
ROBERT MATOS and
SLOBODAN PRANJIC